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MISCELLANY.

Rebuke by Appellate Tribunal of Trial Judge.—A judgment for \$94.19, entered by the City Court in favor of Mrs. Marie Bennett upon the verdict of a jury in a suit brought by her against Isaac Harris and Max Blanck, who carry on business under the name of the Triangle Waist Company, was reversed by Justices Seabury and Bijur, in the Appellate Term of the Supreme Court of New York. The case was tried before Justice John W. McAvoy. Mrs. Bennett sued for \$2,000 damages for assault and battery alleged to have been committed by an employee of the two defendants.

Justice Seabury, who wrote the decision of the Appellate Term, in which Justice Bijur concurs, says:

"The judgment is challenged chiefly upon the ground of the alleged misconduct of the trial Judge. Disagreeable as is the task of determining the merit of this contention, it is a duty which, in justice to the rights of the defendants and their counsel, cannot be ignored.

"In the course of the examination of a witness defendants' counsel said to the witness: 'You keep on enlarging and enlarging,' to which remark the counsel for the plaintiff objected. The following colloquy then took place:

The Court—Sustained. Counsel is censured for making foolish remarks.

Defendants' Counsel—I take an exception to your Honor's remarks.

The Court—If I have to sit here and listen to foolishness by counsel, and not be allowed to reprehend it. I won't stand for this by counsel, and if it happens again I will fine you or commit you, and that will be subject only to habeas corpus and not to a mere exception.

"It seems to us clear that any one experienced in the work of the Trial Term must appreciate how unnecessary this colloquy was, and that without adequate cause it placed counsel for the defendants in the position of having been censured by the court and threatened with fine and imprisonment.

"Subsequently the court undertook a prolonged cross-examination of one of the defendants' witnesses. The examination was such as to plainly show that in the opinion of the court the defendants' witness was unworthy of belief."

Here follows a verbatim report of another colloquy between the court and defendants' counsel in which the court referred to the counsel's objection as "ridiculous," and he refused to allow an exception to the questions which were already asked and answered. Counsel took exception to the court's refusal to hear him, whereupon Justice McAvoy remarked:

The court—No. I will not hear any more from you at all. You stand up again and make a remark to me that I think is insulting to

the court. I will commit you to jail as sure as you are sitting in that chair. I will commit you, and not impose a fine, but a commitment for the full term. I will not sit here and be insulted.

"We think," then continues Justice Seabury, "it unjust that counsel, in endeavoring to protect the rights of his clients, should be subjected to the treatment accorded to defendants' counsel in this case. Counsel was within his rights in noting an exception to the examination by the court. Nor did the fact that counsel made an objection merit the reply that his objection was 'ridiculous.'"

"There were other improper remarks on the part of the trial Judge, but it seems to us that enough has been quoted to show that, in justice to the defendants, this judgment should be reversed.

"A trial in which counsel for one of the parties is held up to ridicule by the court for making proper objections, and is unjustifiably threatened with punishment by fine and imprisonment, and is denied a hearing upon relevant matters, is not a fair trial. An advocate subjected to such persistent discourtesy from the court is embarrassed in the presentation of the cause of his client, and the cause of the client is palpably prejudiced in the eyes of the jury."—New York Times.

IN VACATION.

Substitute Witnesses.—The case in question was a neighborhood quarrel. One side had three witnesses, the other side seven. The supposedly star witness was called to the stand by the lawyer for the accused.

The witness was a laboring man of honest appearance, and after the customary questions as to his name, address, occupation, and length of residence in the city, the lawyer, who relied on the man's testimony largely to clear the defendant, asked:

"Do you know the defendant?"

"Yes, sir."

"You know of the trouble between Mr. A here and the defendant?"

"Yes, sir."

"State to the court just what part of the trouble you saw."

"Oh, I did not see any of it," replied the witness. "My wife saw it all. She was subpoenaed, but she couldn't come, so she sent me."

Needless to say, the witness quickly was withdrawn, and if it had not been for the judge's sense of humor, it might have gone ill with the defendant.

The judge decided that no damage had been done, except to the feelings of the respective sides, and he dismissed the case.—Central Law Journal.